REMARKS

The rejections presented in the Office Action dated July 1, 2005 have been considered. Claims 1-63 remain pending in the Application. Reconsideration of the pending claims and allowance of the Application in view of the present response is respectfully requested.

Claims 6, 7, 12-43, 45, 48, 51, 52, 59, and 60 were withdrawn by the Examiner as being directed to a non-elected inventions or species.

Claims 1-5, 8-11, 44, 46, 47, 29, 50, 53-58, and 61-63 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,445,608 to *Chen et al.* (hereinafter *Chen*).

Respectfully, Applicant disagrees with the Examiner that *Chen* anticipates Applicant's pending claims. *Chen* discloses a photodynamic treatment (PDT) device designed for relatively long-term internal use or implantation in a patient (e.g., hours, days, or weeks, *Chen* column 8, lines 15-21). Applicant asserts that one skilled in the art would not characterize the PDT devices of *Chen* as dissection tools, as dissection tools are not typically left in a patient-implanted configuration for delivering a therapy to an *in vivo* site for hours, days, or weeks.

The devices disclosed in *Chen* employ an infrared light source that is <u>not visible</u> to the human eye. *Chen* discourages use of visible light, since infrared light penetrates more deeply into tissue than visible light (*Chen*, column 9, lines 12-17).

Further, the light source of the *Chen* devices is activated generally after the light source is placed at the treatment site within the patient. *Chen* teaches that:

> The implantable probe is invasively positioned at the treatment site during a surgical procedure that opens the treatment site or provides access to a patient's internal systems, e.g., by an incision allowing insertion of the implantable probe into the cardiovascular system and then <u>left in place after the surgeon has closed the incision</u> adjacent the treatment site. The photoreactive agent is perfused into the treatment site, either during the

surgical procedure or after the implantable probe is positioned in place. Light emitted from the implantable probe then irradiates the photoreactive agent perfused treatment site, either on a continuous basis or intermittently, typically for at least several hours, and perhaps, for several days or weeks. Additional photoreactive agent is perfused into the treatment site as required. (*Chen*, column 8, lines 6-21 (*emphasis added)*).

Chen further teaches that:

During placement of the flexible catheter, a guide wire (not shown) is inserted in central lumen 182. This wire is used to direct and locate a light distribution tip 178 to the desired treatment site. A radio-opaque substance or magnetic resonance (MR) visible substance can be added to flexible catheter 176 to aid visualization of the implantable probe during the placement process. After light distribution tip 178 has been set in place, the wire is removed and the rear of the flexible catheter is connected to an external source of light produced, for example, by an array of LEDs or laser diodes. An example of such an external light source is disclosed below. (*Chen*, column 19, lines 36-47)

Chen fails to teach a dissection tool as is contemplated in Applicant's claims. For example, *Chen* fails to teach a dissection tool that includes a light source provided at the distal end of a dissection member that is adapted to provide a visible locating reference through the skin. *Chen's* PDT devices are not capable of producing a visible locating reference through the skin, as the *Chen* devices employ infrared light for delivering light therapy to a treatment site. *Chen's* disclosure of a light therapy delivery device designed for extended implanted use in the body can not reasonably be considered a dissection tool as is understood by one skilled in the art or contemplated in Applicant's claims.

For at least these reasons, *Chen* does not anticipate Applicant's claims 1-63.

It is to be understood that Applicant does not acquiesce to Examiner's characterization of the asserted art or Applicant's claimed subject matter, nor of the Examiner's application of the asserted art to Applicant's claimed subject matter. Applicant reserves the right to address in detail the Examiner's characterizations and rejections of the claims in future prosecution.

Applicant's dependent claims 2-5, 8-11, 46, 47, 49, 50, 54-58, and 61-63, which are dependent from independent claims 1, 12, 29, 44, and 53 respectively, were also rejected under 35 U.S.C. §102 as being anticipated by *Chen*. While Applicant does not acquiesce with the particular rejections to these dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with Applicant's independent claims. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from *Chen*. Therefore, dependent claims 2-5, 8-11, 46, 47, 49, 50, 54-58, and 61-63 are also in condition for allowance.

Applicant notes a mis-numbering of the original listing of claims as filed that inadvertently omitted a claim 32. Upon the indication of allowable subject matter by the Examiner, Applicant will submit an amendment to correct this omission. Alternatively, Applicant authorizes the Examiner to make such correction by way of Examiner's amendment.

Lastly, in the prior response to the Examiner's election/restriction requirement, Applicant argued that claims 44 and 53 were generic relative to claims 1-28, 45-52, and 54-63. All of the material limitations of claims 44 and 53 are expressly or implicitly recited, in various forms, in claims 1-28, 45-52, and 54-63, and claims 44 and 53 recite no material limitation that is not recited in claims 1-28, 45-52, and 54-63.

Applicant's purpose for making this assertion in the prior response was to rebut the propriety of the election/restriction requirement and, in particular, the Examiner's contention that no claims were generic. Because claims 44 and 53 are indeed generic relative to claims 1-28, 45-52, and 54-63, Applicant is entitled to consideration of the claims to additional species, including those identified by the Examiner, pursuant to 37 C.F.R. § 1.141, upon allowance of generic claims 44 and 53.

It is believed that Applicant's pending and re-joinable claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact the undersigned attorney if there are any questions regarding this matter.

Respectfully submitted,
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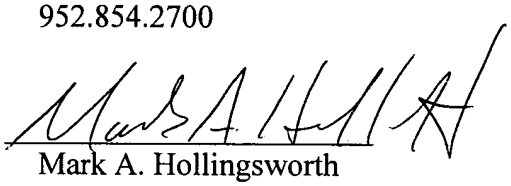
Date: October 3, 2005

By: 
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